No. 18-422

IN THE

Supreme Court of the United States

ROBERT A. RUCHO, ET AL.,

Appellants,

v.

COMMON CAUSE, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BRIEF OF *AMICI CURIAE* DEMOCRACY NORTH CAROLINA AND THE PEOPLE'S ALLIANCE FUND IN SUPPORT OF APPELLEES

JONATHAN K. YOUNGWOOD
Counsel of Record
ISAAC RETHY
JOSHUA C. POLSTER
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, NY 10017
(212) 455-2000
JYoungwood@stblaw.com

Counsel for Amici Curiae

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Other Authorities

Mark Barrett, *Districts Or Not, Asheville A Liberal City*, CITIZEN TIMES (July 8, 2016) 19

Joel Burgess, *Asheville Gerrymandering Focus Of New HBO/'Vice' Segment, Other National Media*, CITIZEN TIMES (Sept. 21, 2017) 20

Kim Dinan, *Area Economy Continues Growth, Low Unemployment*, MOUNTAIN XPRESS (July 6, 2018) 19

Will Doran, *Common Cause Video Says Half Of All NC Legislative Races Are Uncontested Due To Gerrymandering*, POLITIFACT NORTH CAROLINA (Aug. 9, 2016) 25

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Office of the Senate Principal Clerk, *Unofficial General Election Data For The North Carolina Senate 2017 General Assembly 2016 General Election – November 8, 2016*, North Carolina General Assembly (Aug. 2, 2016) 25

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INTEREST OF THE *AMICI CURIAE*[1]

This *amici curiae* brief in support of Appellees is filed on behalf of Democracy North Carolina ("Democracy NC") and The People's Alliance Fund, which are nonpartisan, nonprofit corporations incorporated in North Carolina and organized under Section 501(c)(3) of the Internal Revenue Code. Collectively, Democracy NC and You Can Vote, which is a program of The People's Alliance Fund (together, "*Amici*") have registered tens-of-thousands of North Carolinians to vote and have engaged with hundreds-of-thousands of North Carolinians to help them exercise their right to vote.

Amici's mission and work to organize, educate, and assist voters and potential voters across the State gives *Amici* a substantial interest in this case, as well as a unique perspective on the harms of the 2016 Congressional Redistricting Plan ("2016 Plan"), which was properly invalidated by the District Court below. The partisan gerrymander of North Carolina's congressional districts has engineered noncompetitive elections, created unresponsive legislators, and diluted the votes of North Carolinians. Through their substantial contact with potential North Carolina voters, *Amici* have directly experienced the detrimental impacts of partisan gerrymandering on North Caro-

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[1] Counsel for all parties have filed blanket consents to the filing of *amici curiae* briefs. No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici curiae* and their counsel, made any monetary contribution toward the preparation or submission of this brief.

linians' civic engagement, trust in democratic institutions, and political participation. This case presents this Court with an opportunity to confirm that the Constitution provides a remedy for these harms.

A. Democracy North Carolina

Democracy NC engages in nonpartisan research, organizing, public education, and advocacy in order to increase voter participation and realize pro-democracy reforms, which it believes are mutually necessary goals and prerequisites to the empowerment of historically excluded communities in the political process. For more than 25 years, Democracy NC and its predecessor organization have promoted reforms to make the election system more accessible to underrepresented voters, while also sponsoring educational programs to expand public involvement in the political process.

Democracy NC researches and reports on the administration of elections, the role of money in politics, voter participation, and good government; advocates for policies to make voting more accessible, such as early voting; participates in court cases that seek to maintain voting rights, eliminate corruption in the voting process, and promote transparency; and authors materials and sponsors events to train community members in organizing and advocacy, and the registration and turn-out of voters.

Democracy NC has six offices across the State with staff members who conduct dozens of trainings and educational forums each year about the election process. Democracy NC distributes hundreds-of-

thousands of brochures, voter guides, and other materials to encourage public involvement in elections during the more than 300 events it holds each year. Democracy NC has also filed legal actions against Democratic and Republican elected officials, candidates, parties, and political committees whose actions undermine the public's faith in fair elections.

Democracy NC trains groups of 100–200 volunteers in every county in the State who engage and support North Carolina residents in pro-democracy initiatives. In 2018, Democracy NC registered more than 4,000 North Carolinians to vote and educated and assisted hundreds-of-thousands of North Carolinians to help them exercise their right to vote. Among other things, Democracy NC's voter information website, "NCvoter.org," was viewed over 765,000 times in the run-up to the 2018 elections.

Through its original research, policy advocacy, grassroots organizing, civic engagement, and leadership training, Democracy NC seeks to achieve a government that is truly of, by, and for the people.

B. The People's Alliance Fund You Can Vote Program

The People's Alliance Fund is a nonprofit organization that supports progressive education, research, and service activities in North Carolina communities. You Can Vote was launched in 2014 as a program of the People's Alliance Fund to educate voters on photo identification requirements mandated by North Carolina's 2013 legislation. Since then, You Can Vote has grown to have a broader mission: You Can Vote is a

nonpartisan program that trains and mobilizes volunteers to educate, register, and empower all North Carolina citizens to vote.

You Can Vote works to accomplish its mission by educating voters on topics such as early and absentee voting, residency and photo identification requirements, and on the offices on the ballot. You Can Vote's volunteers also register voters and assist voters in updating their registrations.

Because its volunteers are well-trained and nonpartisan, You Can Vote has partnerships with over 150 community organizations in the State that allow its volunteers to talk with voters in their facilities. These include schools, colleges, hospitals, community centers, courthouses, health clinics, and churches of multiple denominations.

Since its launch, You Can Vote has registered 27,000 voters in North Carolina, including more than 8,000 in 2018 alone. You Can Vote has also held over 350,000 one-on-one conversations with potential voters across the State—including 150,000 in 2018—to educate and prepare North Carolinians to exercise their right to vote.

SUMMARY OF ARGUMENT

Amici are devoted to helping North Carolinians exercise their right to participate in government, including by voting to elect representatives of their choosing who are responsive to the voters in their districts. Collectively, *Amici*'s staff and volunteers have registered more than 30,000 North Carolinians to

vote and spoken with hundreds-of-thousands of potential voters to educate them on voting requirements and urge them to go to the polls. Through these efforts, *Amici* have witnessed the harms wrought by partisan gerrymandering on the people of North Carolina.

In the 2016 Plan, the State legislature intentionally drew the district lines to engineer elections where the outcome would be all-but predetermined. As found by the District Court, the North Carolina General Assembly has ensured that each district is either a "safe" Republican district with little chance of electing a Democrat or a "packed" Democratic district where Republican voters have no real chance to elect a member of their party.

Because elections are noncompetitive, potential voters rightly believe the system has been rigged against them to minimize the impact of their votes. As found by the District Court, both the intent and effect of the General Assembly's districting was to "dilute the votes of voters who favored non-Republican candidates." *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 814 (M.D.N.C. 2018). Further, because North Carolina's districts are, by design, safely Democratic or Republican, voters rightly believe that their representatives are not responsive to members of the opposite party or to independents because cross-party support is not necessary for any given legislator to secure reelection.

Amici have also witnessed district lines that have divided neighborhoods and other natural communities of interest into separate districts, weakening the

collective voice of the voters in those communities. For instance, the line between District 6 and District 13 divides the city of Greensboro, and specifically the campus of North Carolina A&T State University—the largest historically black university in the country. The 2016 Plan thereby dilutes and diminishes the voice and voting power of the citizens of Greensboro and the students of North Carolina A&T.

Amici engage daily with the citizens of North Carolina, who strongly support district lines that are drawn in a nonpartisan manner and are not calculated to favor voters from one party or another. The General Assembly, however, is itself a product of partisan gerrymandering that entrenches the party that draws the district lines and of elections that by design are not competitive. The legislature therefore perpetuates the practice despite popular opposition.

"'[P]artisan gerrymanders . . . [are incompatible] with democratic principles.'" *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2658 (2015) (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 292 (2004)) (brackets in original). The District Court correctly held that "the drawing of [North Carolina's] legislative district lines to subordinate adherents of one political party and entrench a rival party in power . . . strikes at the heart of [] foundational constitutional principle[s]" and voting rights. *Rucho*, 318 F. Supp. 3d at 800. For these reasons, this Court should affirm.

ARGUMENT

I. *AMICI*'S EFFORTS TO MOBILIZE VOTER PARTICIPATION AND ENGAGEMENT ARE HINDERED BY PARTISAN GERRYMANDERING

Amici's mission and work to organize, educate, and assist voters and potential voters across the State give *Amici* unique, on-the-ground insight into the attitudes and experiences of North Carolinians, and, as a result, into the detrimental impacts of the unconstitutional conduct at issue in this case.

As the District Court found, the North Carolina General Assembly intentionally drew the district lines in the 2016 Plan to "ensure Republican candidates would prevail in the vast majority of the State's congressional districts and would continue to do so in future elections." *Rucho*, 318 F. Supp. 3d at 801. Specifically, in creating the State's congressional districts, the legislature drew the district lines to create "safe Republican" majorities in nine districts and to pack the Democratic votes into three districts. *Id.* at 810.[2] Congressional elections are thus designed to be noncompetitive, congressional representatives are incentivized to be nonresponsive, and natural communities of interest are divided by district lines. All of

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[2] The District Court also found a safe Republican majority was created in a tenth district (District 5), but unlike for the other "safe" Republican districts, held that Plaintiffs had not shown the district was drawn intentionally to increase Republican voting strength. *Id.* at 909.

these effects undermine *Amici*'s pro-democracy and pro-voter mission.

A. *Amici*'s Substantial Efforts Towards Voter Registration And Engagement

Democracy NC works to achieve increased civic participation and pro-democracy reforms. It strives to promote greater voter participation, remove barriers to voting, and safeguard against corruption. Democracy NC's extensive engagement with North Carolina citizens is integral to fulfillment of this mission.

Democracy NC generates extensive nonpartisan research and impartial data on voting procedures, laws, and candidates, which its volunteers and staff distribute to North Carolina voters during the more than 300 Democracy NC events each year. In addition, Democracy NC organizers identify and train groups of 100–200 volunteers in each county who mobilize around particular pro-democracy issues by coordinating public information sessions, organizing rallies, and engaging voters through phone calls and door-to-door canvassing. Democracy NC staff and volunteers also register and mobilize voters.

In 2018, Democracy NC registered more than 4,000 North Carolinians to vote, reached out to more than 221,000 voters via phone and text messaging, and distributed more than 1.5 million voter guides and other literature. The organization also maintains "NCvoter.org," a website with information on voting procedures and registration which

was viewed over 765,000 times in the run-up to the 2018 elections.

Similarly, You Can Vote works to register, educate, and empower North Carolinians to vote. To accomplish this mission, You Can Vote relies on trained volunteers who engage with voters in partner agency locations and in public settings where they can talk to large numbers of eligible voters. You Can Vote trains its volunteers to have meaningful conversations with individual voters to elicit and answer voters' questions about elections and voting. You Can Vote emphasizes outreach to voters who have been underrepresented at the polls and who may face barriers to voting, including low-income voters, minority voters, young voters, seniors, people with disabilities, and formerly incarcerated individuals who have completed their sentences.

You Can Vote volunteers help voters complete or update their voter registrations. Volunteers also educate voters about assigned precincts, locations for early voting, and voting deadlines and procedures, including whether any documents will be required at the polls. Throughout these conversations, You Can Vote volunteers remain nonpartisan and do not engage in speech about candidates, political parties, or issues.

Since its launch in 2014, You Can Vote volunteers have held over 3,000 voter drives or events and have had over 350,000 one-on-one conversations with eligible voters. In 2018 alone, You Can Vote trained 1,979 volunteers, held 1,500 voter education drives or

events, and engaged in approximately 150,000 one-on-one conversations with North Carolina voters.

Since 2014, You Can Vote has helped over 27,000 voters complete their registrations, registering over 8,000 voters in 2018 alone. Further, voters registered by You Can Vote turn out to vote at a rate higher than the State as a whole, exceeding the statewide average in 2018 by 10%.

B. Partisan Gerrymandering Discourages Voter Participation

During the course of *Amici*'s registration and mobilization efforts, they have had conversations with hundreds-of-thousands of voters and potential voters across the State. Many have expressed a belief that the outcome of the congressional elections in their districts are "predetermined" because the district lines have been drawn to favor one party or the other. As a result, countless citizens with whom *Amici* have interacted believe their votes do not matter and the votes of those in their communities do not matter. Many potential voters tell *Amici* that because they believe that their votes do not matter, they are not going to vote.

Kate Fellman, You Can Vote founder and Program Director, reports that voters "feel that the elections are predetermined" and that, as a result, the "the level of mistrust in the community regarding voting is staggering." *Amici*'s staff and volunteers working in the community to register and mobilize voters frequently hear responses such as "Why should I

vote? It doesn't make any difference" and "Our votes never count."

Plaintiffs in this case report similar apathy among North Carolinians. "Multiple Plaintiffs testified that in 'the most recent election, a lot of people did not come out to vote'—despite Plaintiffs' concerted get-out-the-vote efforts—'[b]ecause they felt their vote didn't count.'" *See Rucho*, 318 F. Supp. 3d at 931; *see also id.* (quoting Plaintiff Peck's testimony that "I can't tell you how many people told me this election, Republicans as well as Democrats, 'This system is rigged. My vote doesn't count.' It was really hard to try to galvanize people to participate."); *id.* at 822 (quoting Plaintiff Taft's testimony that his "vote really is meaningless because . . . there is no way a candidate who is a Democrat can win in that district"); *id.* at 823 (quoting Plaintiff Freeman's testimony that in his district "there is no remote chance of any Democrat winning, so my vote is just a total waste").

Amici have found that the perception that the system is "rigged" against the voters is particularly strong in minority communities, which have been subject to repeated efforts by the State to pack their votes into noncompetitive districts through racial gerrymandering. *See Cooper v. Harris*, 137 S. Ct. 1455, 1465 (2017) (discussing history of racial gerrymandering in North Carolina). Val Applewhite, a Democracy NC Field Organizer with particular focus on minority communities, for instance, reports that citizens have a "loss of faith in government" as a result of the State's repeated efforts to dilute their votes.

Young people also frequently express particularly strong feelings of disillusionment and disengagement from politics and voting, resulting in part from gerrymandering. Young Democrats in districts where the Democratic vote has been cracked have noted that they have not had a Democratic representative during their lifetimes and expressed the belief that they are unlikely to ever have a representative from their party. The same would be true for a young Republican living in a district where Democratic voters have been packed. Margaret Clemen, for instance, a retired teacher and You Can Vote volunteer, reports frequently hearing from young people that "they are not going to vote because their votes will not make any difference."

Importantly, not only is there a *perception* among North Carolinians that their votes have no impact, the statistical evidence before the Court shows that partisan gerrymandering has had the effect of minimizing the impact of North Carolinians' votes. Because Democratic Plaintiffs were sorted into either cracked districts, where the Democratic candidate had no realistic chance of winning, or into packed districts, where the Democratic candidate was favored by a large margin, Plaintiffs' votes carried less weight than they would have had the districting been nonpartisan. *Rucho*, 318 F. Supp. 3d at 819; *see also id.* at 884 (finding that while State-wide votes were relatively evenly split between Republicans and Democrats, in the three districts packed with Democratic votes, the Democratic candidate received 67.95% of the vote and in the ten other districts, the Republican candidate received 60.27% of the vote); *see also, e.g.*, *id.* at 820–21 (finding that Plaintiff Hall's vote would

have had greater impact in 99.85% of hypothetical alternative districts in which Hall could have been placed); *id.* at 821–23 (finding that Plaintiff Berger's vote would have had greater impact in more than 99% of hypothetical alternative districts).

If allowed to stand, the State's deliberate dilution of North Carolinians' votes is highly likely to persist into the future. The District Court found that the margin of victory in every district "exceed[s] the thresholds at which political science experts, including Legislative Defendants' expert [ ], consider a seat to be 'safe'—*i.e.*, highly unlikely to change parties in subsequent elections." *Id.* at 885. In other words, the noncompetitive elections will continue to be noncompetitive. Regardless of the particular candidates on the ballot, the districts packed with Democratic voters will continue to elect Democrats while the districts where the Democratic vote has been cracked will continue to elect Republicans. *See also* LAURA ROYDEN, MICHAEL LI, AND YURIJ RUDENSKY, BRENNAN CENTER FOR JUSTICE, EXTREME GERRYMANDERING & THE 2018 MIDTERM 25 (Mar. 23, 2018), *available at* https://www.brennancenter.org/publication/extreme-gerrymandering-2018-midterm ("[I]n order for more than two Republican seats to be at risk [in North Carolina], an electoral wave unlike anything North Carolina has seen in recent history would be required.").

In short, when potential voters tell *Amici* that the system is "rigged" against them, they are correct. The districts in North Carolina have been intentionally drawn to diminish citizens' voting power. This partisan gerrymandering discourages citizens from voting

and undermines *Amici*'s mission of increasing voter participation.

C. Partisan Gerrymandering Disincentivizes Legislators From Responding To Their Electorate

North Carolinians have also expressed to *Amici* that representatives in districts that have been designed by the State to be "safe" are not responsive to voter concerns. This is because a representative who does not believe his seat is at risk in the general election has less incentive to engage with and be responsive to voters of the opposite party or independents than if that representative believed bipartisan support would be necessary to win election. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 470–71 (2006) (*LULAC*) (Stevens, J., dissenting in part) ("Members of Congress elected from . . . safe districts need not worry much about the possibility of shifting majorities, so they have little reason to be responsive to political minorities within their district."); *Rucho*, 318 F. Supp. 3d at 893 ("We find that the 2016 Plan has the effect of entrenching Republican candidates in power, even in the face of significant shifts in voter support in favor of non-Republican candidates, and thereby likely making Republican elected representatives less responsive to the interests of non-Republican members of their constituency.").

The testimony in the record is illustrative of this problem. Evidence offered by the League of Women Voters ("League") is that "candidates were often not 'motivated' to participate 'in voter forums, debates, [or] voter guides, because the outcome is so skewed in

favor or in disfavor of one [candidate] or the other.'" *Rucho*, 318 F. Supp. 3d at 831. Plaintiff Fox testified that because her congressman is "in a safe seat," he has "less need[] to engage with the people that he represents" and does not "have to be as responsive to . . . citizen activists." Fox Dep. 29:24–30:2, 30:16–21, ECF No. 101-4, Mar. 22, 2017.

Moreover, because a representative in a "safe" district need not appeal across party lines, he or she is likely to take more polarized positions and use more polarized rhetoric antagonistic to the opposite party. *See, e.g.*, *LULAC*, 548 U.S. at 471, n.10 (2006) (Stevens, J., dissenting in part) (citing literature explaining that "safe seats produce more polarized representatives"); *see also* Kari VanDerVeen, *Examining The Role Of Gerrymandering In Campaign Discourse*, ST. OLAF COLLEGE NEWS (Sep. 17, 2018), https://wp.stolaf.edu/news/researchers-explore-the-role-of-partisan-gerrymandering-in-campaign-discourse (discussing recent research finding campaign rhetoric on congressional candidates' websites to be more extreme when the district's party breakdown was not reflective of the state as a whole).

This movement towards partisanship is concerning for *Amici*, who often hear from citizens that they are turned off from voting by the partisanship displayed by both parties. District lines that encourage partisanship and discourage representatives from appealing across party lines are detrimental to voter engagement.

D. Partisan Gerrymandering Divides Natural Communities, Diminishing Voters' Voice And Influence

The 2016 Plan also undermines voter participation by dividing communities of interest. One of the principal objectives in drawing district lines should be to maintain natural geographic communities within the same district. *See Abrams v. Johnson*, 521 U.S. 74, 92 (1997). People living within a particular town or other geographic community tend to share particular interests as a result of, for instance, common social or economic factors that affect their community. Where district lines are drawn to place a community within a single district, community members can unite to elect or to petition the support of a particular representative. *See Lucas v. Forty-Fourth Gen. Assembly of State of Colo.*, 377 U.S. 713, 750 (1964) (Stewart, J. dissenting) ("[Legislators] represent people . . . with identifiable needs and interests . . . which can often be related to the geographical areas in which these people live. The very fact of geographic districting . . . carries with it an acceptance of the idea of legislative representation of regional needs and interests.").

Conversely, where a district line is drawn to divide a community into multiple districts that include other regions not part of that community, the collective power of the community to elect or petition a representative is weakened and there is less incentive for a representative to be responsive to that particular community. The ability of community members to influence policy is therefore diminished when the com-

munity is improperly divided among disparate districts. *See* Nicholas Stephanopoulos, *Redistricting and the Territorial Community*, 160 U. PA. L. REV. 1379, 1390–1393 (2012).

Despite the interest of North Carolinians in maintaining geographic communities within single districts, congressional district lines were intentionally drawn to divide geographic communities so as to increase partisan advantage. For instance, the cities of Greensboro, Fayetteville, and Asheville, and numerous counties, were intentionally divided into multiple districts in order to diminish the collective voice of those cities' and counties' citizens. *Rucho*, 318 F. Supp. 3d at 883; *see id.* at 902–22 (discussing examples where the 2016 Plan "divides municipalities and communities of interest along partisan lines").

In Greensboro, the line between Districts 6 and 13 was drawn to divide the city and was specifically drawn through the middle of the campus of North Carolina A&T State University.[3] Students in nine dormitories vote in one district while students in six dormitories vote in another.[4] North Carolina A&T is the largest historically black university in the country

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[3] *See* Ella Nilsen, *North Carolina's Extreme Gerrymandering Could Save The House Republican Majority*, VOX (May 8, 2018, 11:00 AM), https://www.vox.com/policy-and-politics/2018/5/8/17271766/north-carolina-gerrymandering-2018-midterms-partisan-redistricting.

[4] *See* Spectrum News Staff, *NC A&T Students March Against Voting Hurdles*, SPECTRUM NEWS (Oct. 29, 2018, 11:27 AM), https://spectrumlocalnews.com/nc/triad/news/2018/10/29/nca-t-students-march-against-voting-hurdles.

with 10,000 students,[5] and a natural community of interest. By dividing the community between districts, the voice and voting power of the citizens of Greensboro, and in particular North Carolina A&T students, are diluted. As one student noted, if united in the same district, North Carolina A&T students could "have the power to sway [an] election" but "dividing that in half" with each half in a majority-Republican district, "dilutes the vote."[6]

The City of Fayetteville and surrounding Cumberland County—which include large clusters of historically Democratic districts—have been cracked by the line between Districts 8 and 9. Districts 8 and 9 are "serpentine" districts, each spanning eight counties, and "join[ing] sections of the state that have little in common." *Rucho*, 318 F. Supp. 3d at 913–16. While historically, congressional districts that included portions of Cumberland County were "reasonably competitive," *id.* at 824, the 2016 Plan ensured Districts 8 and 9 would be "safe Republican" districts. *Id.* at 913–15. As a result, the Districts' representatives are disincentivized from spending time in Cumberland and Asheville. Ms. Applewhite, the Democracy NC Field Organizer—a former three-term member of Fayetteville's City Council and Air Force veteran—reports that the representatives for Districts 8 and 9 do not spend time interacting with Fayetteville and Cumberland citizens, and particularly the City's minority and military communities. In the words of Ms.

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[5] *Id.*

[6] *Id.*

Applewhite, "it feels like the people of Fayetteville and Cumberland have no representation."

To take another example, Asheville is the largest city in western North Carolina and has a long history of voting Democratic.[7] The surrounding Buncombe County has vibrant health care and manufacturing sectors and one of the lowest unemployment rates in the State.[8] Asheville-Buncombe voters have a community of interests different from those of voters in surrounding rural counties. *See, e.g.*, Sarver Dep. 9–33:4, ECF No. 101-23, April 10, 2017 (testimony of Plaintiff Sarver, an Asheville resident, that Asheville has distinct economic, cultural, and political interests).

Historically, Buncombe County (and Asheville) has been within one district in which elections were competitive. *Rucho*, 318 F. Supp. 3d at 825. Yet, the 2016 Plan splits Buncombe County and Asheville between two "safe" Republican districts, *id.*, where the preferred candidate of most people in Asheville and Buncombe County has no real chance at election. *Id.* at 897. As Plaintiff Sarver testified, "because Asheville is divided into two Congressional Districts the

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[7] Mark Barrett, *Districts Or Not, Asheville A Liberal City*, CITIZEN TIMES (July 8, 2016, 12:26 PM), https://www.citizen-times.com/story/news/politics/elections/2016/07/08/districts-not-asheville-liberal-city/86859454/.

[8] Kim Dinan, *Area Economy Continues Growth, Low Unemployment*, MOUNTAIN XPRESS (July 6, 2018), https://mountainx.com/news/area-economy-continues-growth-low-unemployment/.

political voice is diluted." Sarver Dep. 25:12–14, ECF No. 101-12, April 10, 2017; *see also id.* at 25:21–25 ("[I]f Asheville was in one Congressional District I feel like there would be a lot more accountability for [representatives] to show up to a town hall or to respond to constituents . . . ."). Asheville's mayor explains that the people of Asheville believe "their voice has been eradicated by gerrymandering."[9]

Moreover, as in Greensboro, the district line through Asheville was intentionally drawn through a university campus (the University of North Carolina Asheville),[10] diluting the voice of that campus community.

In addition to diluting communities' voices through cracking, the District Court also found that the 2016 Plan "divides municipality and communities of interest" by packing. For instance, the line between Districts 2 and 4 divides Wake County in order to pack historically Democratic voters into District 4 (along with concentrations of Democratic voters in Raleigh, Durham and Chapel Hill) while placing the

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[9] Joel Burgess, *Asheville Gerrymandering Focus Of New HBO/'Vice' Segment, Other National Media*, CITIZEN TIMES (Sept. 21, 2017, 7:44 AM), https://www.citizen-times.com/story/news/local/2017/09/21/asheville-gerrymandering-focus-new-hbo-vice-segment-other-national-media/689845001/.

[10] WLOS Staff, *District Line Puts Floor-Mates At UNC Asheville In Different Precincts*, WLOS (Nov. 3, 2016), https://wlos.com/news/local/district-lines-run-through-2-unc-asheville-dorms.

county's historically Republican precincts into District 2 to create a safe Republican district. *Rucho*, 318 F. Supp. 3d at 822, 904–906; *see also* Fox Dep. 20:10–14, ECF No. 101-4, Mar. 22, 2017 (Plaintiff Fox explaining that in Wake County, "all of the Democrats are smooshed together so that they're going to win with a huge surplus of votes because everybody's been packed into one heavily Democratic district.").

The division of communities is antithetical to the mission of *Amici*, which aim to assist North Carolinians in exercising their collective voice and in electing representatives responsive to the concerns of their constituents.

II. NORTH CAROLINIANS HAVE NO REASONABLE PROSPECTS OF ENDING PARTISAN GERRYMANDERING LEGISLATIVELY

A. North Carolinians Oppose Partisan Gerrymandering And Have Petitioned The State Legislature To Draw District Lines Impartially

In *Amici*'s experience, the substantial majority of North Carolinians oppose partisan gerrymandering. Recent polling suggests nearly 60% of registered voters support laws that would require congressional

maps be drawn in a nonpartisan fashion.[11] This support cuts across party lines.[12]

Amici have organized public education efforts around this opposition to partisan gerrymandering. Both Democracy NC and You Can Vote participated in the 2017 Fair Maps campaign which had the goal of mobilizing support for a process for drawing district maps that is fair, open to the public, and nonpartisan.

As part of the Fair Maps campaign, hundreds of *Amici*'s volunteers participated in phone banks, went door-to-door, and set up booths at community events. Over a nine-month period in 2017, Democracy NC collected nearly 23,000 petition signatures in support of nonpartisan districting. The majority of the signatures came from North Carolinians with no previous connection to Democracy NC, but who were nonetheless motivated to take action because of the harms caused by partisan gerrymandering. *Amici* also collected nearly 2,500 postcards addressed to individual North Carolina representatives calling on them to support an independent, nonpartisan districting process. Still more postcards were mailed directly by citizens to their representatives. Other citizens contacted their representatives by phone and email to urge their support for nonpartisan districting. Citi-

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[11] *See* Public Policy Polling, *Democrats Have Edge, Energy in North Carolina For 2018*, 1 (Jan. 23, 2018), https://www.publicpolicypolling.com/wp-content/uploads/2018/01/PPP_Release_NC_12318.pdf.

[12] *Id.* at 1, 7.

zens also expressed their opposition to partisan gerrymandering in-person to their representatives. On March 1, 2017, Democracy NC co-hosted the "Citizens Lobby Day to End Gerrymandering" at the North Carolina Legislative Building in Raleigh. Nearly 400 citizens attended, coming from across the State.

Through this work, *Amici* found overwhelming popular opposition to partisan gerrymandering. For instance, of the 1,290 people who You Can Vote volunteers spoke to during their door-to-door efforts, 1,239—*i.e.*, 96%—completed a postcard to their representative in support of nonpartisan districting. North Carolinians support political districts that are not drawn to diminish the power of their votes.

B. Because The North Carolina Legislature Is A Product Of Partisan Gerrymandering, It Has Refused To Act

Despite the efforts of *Amici* and tens-of-thousands of North Carolinians, the North Carolina General Assembly has refused to take action to end partisan gerrymandering. During the 2017-2018 Session, bills were introduced in both the North Carolina House and Senate that would require congressional districts be drawn in a nonpartisan manner that does not intentionally dilute the strength of votes based on party

affiliation.[13] Neither bill has been passed out of committee for a vote.[14]

The refusal of the State legislature to end partisan gerrymandering is not surprising because the State legislators are themselves products of partisan gerrymandering. Similar to the U.S. congressional districts at issue in this case, the State House and Senate district lines were intentionally drawn to pack and crack the Democratic votes, thereby making elections noncompetitive and entrenching incumbents and the party which drew the lines. *See* Defendants-Appellees' Brief on Remand at 56, *Dickson v. Rucho*, 2015 WL 4456364 (N.C. 2015) (State's brief acknowledging that district lines "were drawn to maintain Republican majorities in the General Assembly and increase the number of Republican leaning congressional seats.").[15] The "chief architect" of the State legislative districts was the same Thomas Hofeller who drew the U.S. congressional district lines at issue here. *Covington v. North Carolina*, 316 F.R.D. 117, 126 (M.D.N.C. 2016) (internal quotations omitted), *aff'd*, 137 S. Ct. 2211, (2017).

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[13] H.B. 674, 2017 Gen. Assemb., Reg. Sess. (N.C. 2017); S.B. 702, 2017 Gen. Assemb., Reg. Sess. (N.C. 2018).

[14] H.B. 674, 2017 Gen. Assemb., Reg. Sess. (N.C. 2017); S.B. 702, 2017 Gen. Assemb., Reg. Sess. (N.C. 2018).

[15] The State legislative districts were also a product of unconstitutional racial gerrymandering. *Covington v. North Carolina*, 316 F.R.D. 117, 130 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017).

Tellingly, in the 2016 State House of Representatives general election, nearly half of the seats—57 of 120—were not contested.[16] Nearly 30% of the State Senate seats—15 of 50—were uncontested.[17] Through partisan districting, the North Carolina legislature has thereby entrenched both itself and the State's U.S. congressional representatives and diluted the votes of North Carolinians who overwhelmingly support nonpartisan districts.

The District Court therefore correctly found that the 2016 Plan violates "'the core principle of [our] republican government . . . that the voters should choose their representatives, not the other way around.'" *Rucho*, 318 F. Supp. 3d at 801 (quoting *Arizona State Legislature*, 135 S. Ct. at 2677 (2015)). As

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[16] *See* House Principal Clerk's Office, *Miscellaneous Data Sheet, General Election for 2017 House of Representatives*, North Carolina General Assembly (Nov. 10, 2016), https://www.ncleg.gov/DocumentSites/HouseDocuments/Election%20Documents/2017%20NC%20House%20General%20Election%20Data%20Sheet.pdf.

[17] *See* Office of the Senate Principal Clerk, *Unofficial General Election Data For The North Carolina Senate 2017 General Assembly 2016 General Election – November 8, 2016*, North Carolina General Assembly (Aug. 2, 2016), https://www.ncleg.gov/DocumentSites/SenateDocuments/2017%20Election%20Documents/Senate%202016%20General%20Election%20Data.pdf; *see also* Will Doran, *Common Cause Video Says Half Of All NC Legislative Races Are Uncontested Due To Gerrymandering*, POLITIFACT NORTH CAROLINA (Aug. 9, 2016, 7:46 PM), https://www.politifact.com/north-carolina/statements/2016/aug/09/common-cause/common-cause-video-says-half-all-nc-legislative-ra/.

such, the 2016 Plan violates the constitutional rights of North Carolinians.

CONCLUSION

The judgment of the District Court should be affirmed.

Respectfully submitted,

JONATHAN K. YOUNGWOOD
Counsel of Record
ISAAC RETHY
JOSHUA C. POLSTER
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, NY 10017
(212) 455-2000
JYoungwood@stblaw.com

Counsel for Amici Curiae

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